Cambridge University Press et al v. Patton et al
Doc. 143 Att. 6

EXHIBIT 6

Dockets.Justia.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CAMBRIDGE UNIVERSITY PRESS, et al.,

Plaintiffs,

vs.

Civil Action File No. 1:08-CV-1425-ODE

MARK P. BECKER, in his official capacity as Georgia State University President, et al.,

Defendants.

- - -

Videotaped deposition of JODI KAUFMANN, taken on behalf of the plaintiffs, pursuant to the stipulations contained herein, before Teresa Bishop, RPR, RMR, CCR No. B-307, at 104 Marietta Street, 6th floor, Room 3, Atlanta, Georgia, on Wednesday, May 6, 2009, commencing at the hour of 8:55 a.m.

Shugart & Bishop
Certified Court Reporters
Suite 140
13 Corporate Square
Atlanta, Georgia 30329
(770) 955-5252

I N D E X

Examinations	Page
EXAMINATION BY MR. RICH	4
EXAMINATION BY MS. GARY	111
FURTHER EXAMINATION BY MR. RICH	113

E X H I B I T S

No.	Description	Page
98	sibilus from the fall of 2008 for the EPRS 8500 course	44
99	syllabus for EPRS 8500, summer of 2007	51
100	fair use checklist	75
101	syllabus for EPRS 8510 from spring '09	96
102	for EPSF 9280 from fall 2006	103
103	spring 2007 sibilus for the 8500 course	104
104	EPRS 8510 syllabus for summer 2007	105
105	syllabus for EPRS 8500, fall 2007	105
106	syllabus for EPRS 8510 spring 2008	106
107	syllabus for EPRS 8510 summer '08	107
108	syllabus of Fournillier for course 8500 for summer 2008.	107

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFFS:

R. BRUCE RICH
TODD D. LARSON
ATTORNEYS AT LAW
WEIL GOTSHAL & MANGES
767 FIFTH AVENUE
NEW YORK, NY 10153-0119
212.310.8238
TODD.LARSON@WEIL.COM

JOHN H. RAINS, IV
ATTORNEY AT LAW
BONDURANT, MIXSON & ELMORE
1201 WEST PEACHTREE
SUITE 3900
ATLANTA GA 30309-3417
404.881.4121

FOR THE DEFENDANTS:
LAURA GRAY
ATTORNEY AT LAW
KING & SPALDING
1180 PEACHTREE STREET, N.E.
ATLANTA, GA 30309-3521
404.572.2530
taskew@kslaw.com

BHARATH PARTHASARATHY
ATTORNEY AT LAW
GEORGIA STATE UNIVERSITY
OFFICE OF LEGAL AFFAIRS
P.O. BOX 3987
ATLANTA, GA. 30302-3987

ALSO PRESENT:

KENNITH DRAKE, VIDEOGRAPHER

- - -

THE VIDEOGRAPHER: This will be the videotaped deposition of Jodi Kaufmann taken by the plaintiffs in the matter of Cambridge University Press et. al. versus Mark P. Becker in his official capacity as Georgia State University president et. al.

The date is May 6th, 2009. We are on the record at 8:55:56.

JODI KAUFMANN,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. RICH:

Q. Good morning. My name is Bruce Rich. I'm a partner at the law firm of Weil, Gotshal & Manges and our firm as I think you may know represents the plaintiffs in this action. And I will be asking you questions at today's deposition.

Would you state your name and address for the record, please?

A. Jodi Kaufmann. 2219 Lake Park Drive.

Q. And Ms. Kaufmann, have you ever been through the process of a deposition?

A. No.

Q. I take it, though, that you're being

represented today by counsel?

A. Yes.

Q. And has your lawyer or have your lawyers explained to you the basic procedures for the deposition?

A. Yes.

Q. Okay. And I won't belabor that, but the main suggestion I'll make to you is speak as clearly as you can and make sure you understand my questions. And if ever you don't I hope you won't hesitate, I know your counsel won't, to indicate that you don't and I'll be happy to try to accommodate you.

What did you do to prepare for today's deposition?

A. I met with them and that was it.

Q. And when did you meet -- who is them?

A. Counsel. I met with them Monday.

Q. Can you identify who you met with by name?

A. Laura, and I don't remember the other names.

Q. Was any inside counsel for the university present at the preparation?

A. Yes. Cynthia Hall.

Q. Okay. And for how long did you meet?

A. Approximately three hours.

Q. I may ask you as we identify certain documents

today whether you were shown any of those documents in your preparation and you can advise me at that point in time if you did so.
What is your position at Georgia State University?
A. Assistant professor.
Q. And for how long have you been employed by Georgia State in that capacity or any capacity?
A. Two and a half years.
Q. Okay. Did you begin as an assistant professor?
A. Yes.
Q. All right. And is that a tenured track position?
A. Yes.
Q. Have you earned tenure?
A. Not yet.
Q. What's the -- is there a normal timeline for that process?
A. Three more years.
Q. Three more years. And what is your area or what are your areas of teaching specialization?
A. I teach in the college of education and I teach qualitative research.
Q. Do you teach both undergraduate and graduate

students?

A. No. Only graduate.

Q. Only graduate students. And since you have been on the faculty at Georgia State University how many different courses, by that I don't mean how many times you may have taught a particular course, but how many different substantive courses have you taught in your field?

A. I believe three.

Q. Can you identify those?

A. 8500, EPRS 8500, EPRS 8510, EPSF 91 something.

Q. Okay. Now, could you put names to those numbers?

A. Qualitative 1 is 8500. Qualitative 2 is 8510. I don't remember what the other one was.

Q. Do you remember the general subject matter?

A. It's qualitative research. It might have been interpretive inquiry.

Q. And who enrolls in these courses in terms of what kind of degree candidates?

A. Predominantly Ph.D. students. And for some students it's required, for some students it's an elective.

Q. I'm sorry, if you could lift your voice a little.

A. Some students it's required, some students it's an elective.

Q. And for which group of students is it required?

A. I don't know. I don't know.

Q. And what are the fewest number of students that have ever actually enrolled in, sat through and completed one of these courses?

A. I do not know the exact number. Approximately 12, 16, 14.

Q. And what would you estimate the largest number you've had enrolled in one of these courses?

A. Approximately 22.

Q. And you say predominately Ph.D. candidates, are there sometimes candidates for a master's degree who are in the class?

A. I've had a couple master's degrees.

Q. To a total lay person in terms of the meaningfulness of qualitative research, could you very generally describe, if possible, what the field entails at least in terms of the teaching aspirations and intentions of these courses. And if you want to do it overall, that's fine. If you want to break it down by the three different course offerings or the two that you recall, that's fine.

A. Qualitative research predominately looks at understanding the every day life world and culture, people's experiences. And so what I teach are methods for students to learn how to do this.

In qualitative 1, that's predominately theoretical in terms of what are the theories that underpin the field. And qualitative 2 looks at ways to collect data for their study.

Q. Would it be overly simplistic to say that qualitative 2 has an empirical aspect to it or is that an incorrect way to think about it?

A. That's not the way I would categorize it.

Q. Now, you're teaching within the education curriculum, correct?

A. (Nods head affirmatively.)

Q. Are the principles which you teach, for example, in qualitative 1, the theory course, do those transcend the discipline of education or are they targeted completely or somewhat to the education field?

A. No, transcends education.

Q. Are there other faculty at Georgia State University in one or more graduate programs who teach courses that are substantively similar?

A. Yes. There's other people in my program who teach 8500 and 8510.

Q. And can you identify those?
A. Dr. Janice Fournillier.
Q. Can you spell that, please, for the record?
A. F-O-U-R-N-I-L-L-I-E-R. And Dr. Esposito.
Q. Dr. Esposito have a first name that you know?
A. Jennifer.
Q. And what differences, if any, are there in the -- in the nature of the courses, let's say the 85 -- does each of those individuals teach the 8500 course?
A. I believe they have.
Q. And is the, to your knowledge, is the substance of the courses essentially the same irrespective of whether you or any of the other two individuals is teaching that course?
A. I do not know.
Q. You don't know. Are you familiar with the syllabi used by either Professor Fournillier or Professor Esposito?
A. No.
Q. You've never seen it?
A. No.
Q. Have you ever discussed with them the reading materials that they would offer for the 8500 course?
A. No.
Q. So sitting here today, do you have any

knowledge whether there is any overlap in the reading materials offered when they teach the 8500 course versus when you teach it?

A. No.

Q. You have no knowledge of that whatsoever?

A. No. I don't know how they teach it.

Q. What position on the faculty does Professor Fournillier have? You are an assistant professor, is she -- what is her --

A. Assistant professor.

Q. And as for Dr. Esposito?

A. Assistant professor.

Q. And in relation to when you came to GSU, when did they begin teaching at the university?

A. Dr. Fournillier and I came at the same time. Dr. Esposito I believe had been here two years prior to that.

Q. And is there a departmental chair in the education department?

A. Yes.

Q. Who is that?

A. Sheryl Gowen.

Q. Would you spell that, please?

A. G-O-W-E-N. Sheryl with an S.

Q. And in relation to teaching any of the three courses you identified, what interaction if any have you had with Ms. Gowen?

A. She's my boss. Any questions that I have or difficulties or anything that I have I go to her. Reviews I get from her. And just incidental hall talk.

Q. Is it your practice -- strike that.

Is there an understanding within the faculty in the Department Of Education that proposed syllabi for a given course will be reviewed by one or more other faculty members?

A. No.

Q. It's entirely in the discretion, in your case, what you teach is entirely in your discretion, is that correct?

A. Yes.

Q. Is the answer the same with respect to the choice of reading materials for a course?

A. Yes.

Q. Has it been nonetheless your practice to -- prior to finalizing course syllabi to run that by either Ms. Gowen or anybody else?

A. No.

Q. You first taught the 8500 course in 2006, is that correct?

A. If you tell me so, yes.

Q. Whenever it was you first taught it, how did you come to construct the course syllabus? What was your process?

A. I constructed it predominantly on the way that I was mentored at the University of Georgia to teach qualitative research.

Q. And that triggers in my mind for the record identifying the educational background you hold, please, by institution and degree.

A. I got my Ph.D. from the University of Georgia. And after that I taught there as an adjunct faculty teaching qualitative 1 and qualitative 2, essentially the same courses. And was mentored in teaching those. And it was those syllabi that I brought with me and then updated making some few changes to teach here.

Q. To what degree are the course -- and when you say you brought those with you, was that both the 8500 and the 8510 courses?

A. Yes.

Q. And to what degree, if you were to compare the syllabi for these courses from their most recent offerings to those which you utilized at the University of Georgia, to what degree have those changed over time?

A. I don't know. It's been continual and small changes and continually tweaking things and adding things. So I'd have to look back and see where it was.

Q. When did you teach at the University of Georgia?

A. The two years prior to coming here after graduation. I graduated in 2004, so 2006, 2006 I assume.

Q. And the reason you moved from the University of Georgia to Georgia State was?

A. Tenure.

Q. Opportunity for tenure?

A. (Nods head affirmatively.)

Q. Now, looking at a posting on the Georgia State University web site what appears to be your degree history -- and I'll just try to short circuit it. You're welcome to see this but we don't need to mark it unless necessary.

I see you graduated with a BA degree in 1983 from University of Washington in Seattle, is that correct?

A. Yes.

Q. And thereafter attended the -- you received a Washington State initial certificate from Seattle Pacific University?

A. Yes.

Q. And what is that?

A. Teaching certificate.

Q. Teaching certificate. Did that entail some graduate work on your part?

A. I don't remember.

Q. And then you received a master's in education according to this in 1997 from Antioch University in Seattle, correct?

A. Yes.

Q. And during that 12 year period were you also employed?

A. Yes.

Q. And what were you doing?

A. Teaching.

Q. Where and what?

A. I taught several years at Waldorf, I taught at the Islamic School, all private schools, and I tutored.

Q. And field of education?

A. Yes.

Q. And what level of students were involved?

A. Predominantly elementary school.

Q. You indicated a few minutes ago in terms of curricular selection and course materials selection you have autonomy, is that correct?

A. Yes.

Q. Are there nevertheless any other rules, guidelines or strictures which inform how you go about developing and/or teaching your courses?

A. Officially?

Q. Officially or unofficially.

A. I believe there's official rules or I assume there are in terms of having to meet and what times we meet. But what I put into the curriculum I'm not aware of any rules.

Q. What university policies guide you more generally as a faculty member?

A. I don't know.

Q. For example, is there a -- do you perform research as part of your roles in the faculty?

A. Uh-huh.

Q. Is that a requirement?

A. It's a -- no.

Q. I assume, though, it would be desirable if you're on a tenure tract to pursue research?

A. Yes, or theoretical work.

Q. And in your circumstance does that entail either preparing works for peer reviewed publication or otherwise?

A. Yes.

Q. And have you in fact prepared such works?

A. Yes.

Q. Can you identify those and whether they've been published?

A. I have publications in Qualitative Inquiry, International Journal of Qualitative Studies In Education, Adult Education Quarterly, Critical Methodologies, Critical Studies. I think that's it.

Q. And why did you prepare the articles you've identified?

A. It's my job.

Q. Could you say it a little more -- your job meaning that you're required to do it or --

A. Required in the sense that if you want tenure you publish. No one asked me are you publishing.

Q. And how did you determine the publications in which you would seek to be published?

A. I look at journals that have low acceptance rates, because the lower the acceptance rates the higher the prestige you get for publishing in that journal.

Q. So by rough analogy that would mean, you get into the most selective college that will admit you --

A. Exactly.

Q. -- same concept?

A. Exactly. And also a fit for that piece.

Q. And in your field which publishers and which publications of those publishers are the most selective in the sense of how you described that?

A. You mean in terms of the journals that I just mentioned?

Q. Yes. Or any journals. In other words, aspirationally, if you say if I could be published in my field ideally I'd like such publisher with such publication to publish me, what would that list be?

A. Qualitative Studies In Education, Qualitative Inquiry and Critical Studies, Critical Methodologies.

Q. And do you know the publishers of those publications?

A. No.

Q. Are you familiar with a publisher by the name of Sage?

A. Yes.

Q. What is your opinion of the quality of the works published by Sage?

A. Sage publishes quality work in Qualitative Education, Qualitative Studies.

Q. Have you been published in Sage?

A. If those journals are published by Sage.

Q. Do you remember writing a piece called Heteronarrative Analysis --

A. Uh-huh.

Q. -- for Qualitative Inquiry?

A. Yes.

Q. And I'll represent to you that that's a journal published by Sage.

So assuming my representation is accurate, you are a Sage contributor then, correct?

A. Okay.

Q. Do you have any recollection, any specific -- staying within Heteronarrative Analysis publication, do you have any recollection of any specific interactions with that publisher or with that journal, with the editors of the journal?

A. With Norman Denzin.

Q. And could you identify who he is?

A. The editor of QI.

Q. And what was the nature of that interaction?

A. We're happy to accept your piece, those types of letters, would you send this form, send back this copy, that type of thing.

Q. Were you pleased to be published by that journal?

A. Yes.

Q. Did you view that as potentially reputation enhancing in your field?

A. Yes.

Q. Did you view that as promotive of your interest in attaining tenure?

A. Yes.

Q. Would you say those instincts typically reflect the instincts of similarly situated professors whether at GSU or elsewhere who are interested in obtaining tenure in their fields?

A. I can only assume. I don't know what other people think.

Q. But from your knowledge and conversations with peers, I take it that your own activity in that respect is not unique, correct?

A. I would not think so.

Q. Okay. And do you have any understanding how publishers like Sage stay in business?

A. No.

Q. Do you know them to be for profit?

A. I assume so, yes.

Q. Do you believe that without the ability to earn a profit they would be able to provide a platform for people like you to publish?

A. That makes sense.

Q. Pardon me?

A. That makes sense.

Q. Do you know the degree to which the journal issue that -- in which your Heteronarrative Analysis was published, the degree to which it found circulation?

A. No.

Q. What do you know about the publishing business in general?

A. Little.

Q. What do you know about the journals publishing business in particular?

A. Little.

Q. Anything you've ever investigated?

A. No.

Q. Do you have any knowledge of the degree of success of any of the journals in which any of your works has been published?

A. No.

Q. Do you have any idea of the volume of circulation of any of the journals in which you've been published?

A. No.

Q. What study of the literature in your field do you make as a common practice?

A. What do you mean?

Q. What is your awareness of the range of published literature in your field?

A. I read the handbooks, I read hard, regular books, nonedited books that are specific to my interests because the field is much broader than I can keep up with. And I look at what's being published in mostly the journals that I've already mentioned and keep track of kind of what people are talking about.

Q. What would be the impact on your ability to teach in your field of not having access to that range of publications?

A. It would be problematic.

Q. How so?

A. If I did not have access to the journals then I would not know what conversations were being had.

Q. And therefore what would it do to your efficacy as a professor in your field?

A. It would diminish my ability to teach and also enter into those conversations, theoretically.

Q. So the viability of publishing enterprises that produce journals and other materials that inform you in your field is important to you as an educator, is that correct?

A. Yes.

Q. And what would be the impact on your ability to teach students if you are unable to afford them access to that range of reading materials?

A. It would be difficult to keep them abreast of what was happening.

Q. What would you do in the absence of those materials?

A. I have not thought about it.

Q. Would not be a good thing for the educational process, would it?

A. No.

Q. Have you ever earned any royalties from any of the -- from having any of your works published?

A. No.

Q. Were you ever entitled to receive any royalties from any of those?

A. No.

Q. Did you sign any ever formal publishing agreements with any of the journals?

A. Whatever they send I sign.

Q. You sign.

I take it the consideration for doing so in your case was other than monetary --

A. Correct.

Q. -- as you've testified, correct?

A. Correct.

Q. And for you it was more important to have the credentials, as it were, of those publications than receiving whatever royalty check you might otherwise have, correct?

A. Yes.

Q. What is your understanding of the consequences if a faculty member at Georgia State University were determined to have engaged in plagiarism?

A. I do not know.

Q. Are you aware whether there are university policies that speak to that event?

A. I assume. I mean, we all know you don't do it.

Q. Are you aware of any instances in which during your time at Georgia State University such activity has occurred or been alleged to have occurred?

A. No.

Q. And what policies exist at Georgia State University to your knowledge in relation to proper comportment between faculty members and students?

A. What does comportment mean?

Q. Behavior and direction.

A. Say the question again? Say the question again?

Q. Are there policies that govern the limits of proper interaction between faculty and students?

A. The only thing I can think of is sexual harassment. Other than that I do not know.

Q. And what is the -- what is your understanding of -- is there a policy involving that at Georgia State University?

A. I would assume so.

Q. And do you know the consequences if a faculty member is found --

A. No.

Q. -- to have engaged in such practice?

A. No.

Q. Where is that enforced in the University System, do you know?

A. I do not know.

Q. Have you seen the complaint which our clients filed which commenced this litigation?

A. No.

Q. Have you had it described to you in -- I'm not asking you what conversations you might have had with counsel, but have you had its contents generally described to you?

A. I don't think so. I mean, I basically know it's around copyright.

Q. Let me ask you more generally, sitting here today do you have any understanding of why this lawsuit is ongoing, what is involved, what issues are involved in this lawsuit?

MS. GARY: I'd like to instruct the

witness to answer to the extent she can without waiving attorney privilege.

MR. RICH: Absolutely.

BY MR. RICH:

Q. In other words, I don't want to know in hyperbole what your counsel told you, but if without doing that you are able to --

A. Tell you what I know.

Q. -- in a general sense of what you know, that's what I want you to tell me.

A. What I know is that my understanding is that Georgia State or the University System of Georgia is being sued by publishers for copyright infringement. That's what --

Q. Do you know the kinds of activities claimed to have been engaged in by Georgia State that give rise to this lawsuit?

A. No. I think it has something to do with EReserves. Other than that, no.

Q. Okay. In the course of your education, your own process of being educated and subsequently in the course of your teaching career, what level of understanding of copyright law have you developed?

A. Minimal. Well, prior to -- prior to the new policies that have been put in place, I think there's --

Q. Fine. That's fair. Let's take that in segments then, if you like.

Prior to the new policy my question is what level of understanding of copyright law you've developed?

A. Pretty minimal. The primary understanding that I had and used was use less than 20 percent of a work.

Q. Now, when did you develop that guideline?

A. I do not know.

Q. Did it precede or predate your arrival at Georgia State University?

A. Yes.

Q. And is there any document or lecture or guideline or anything that comes to mind which provided you with that benchmark?

A. No. It's one of those things that I picked up somewhere and I don't know where.

Q. Now, from the time you came to Georgia State University and prior to the implementation of the new policy, which we'll come to shortly, did you ever have occasion to discuss any copyright law questions with anybody?

A. No.

Q. And so when you developed your syllabi for your courses and you selected the reading materials, was that done in terms of copyright considerations, was that done basically just based on your own level of knowledge and understanding?

A. Yes.

Q. And guided by -- and the one precept you were guided by was it shouldn't exceed 20 percent of the work?

A. Yes. Yes.

Q. Now, in the case of an anthology, let's say the Sage Handbook Of Qualitative Analysis -- Research, what -- how did you interpret the 20 percent limitation if at all?

A. I considered the work as a whole.

Q. So that if it was, let's say for discussion sake 1,000 pages, and I think it exceeds 1,000 pages, then it would be a maximum of 20 percent of that 1,000 pages?

A. Yes.

Q. Did you understand yourself prior to the new policy, did you understand yourself to have any obligations in developing and utilizing this rule of checking in with university counsel?

A. No.

Q. Of checking in with any library staff?

A. No.

Q. Of checking in with any EReserves coordinators?

A. No.

Q. Of checking in with any reserve desk personnel in the library?

A. No.

Q. Of checking in with the provost's office?

A. No.

Q. In the time from when you arrived at GSU up until the implementation of the new policy, did anyone ever on their own instance comment to you about copyright issues associated with the selection of course reading materials you made?

A. No.

Q. And so I take it that in utilizing the EReserves system, which we'll get to in a little more detail, nobody, for example, who scanned those materials or otherwise facilitated the creation of the course pages either rejected specific excerpts or made any inquiry of you, is that correct?

A. No. Yes, that is correct.

Q. And did you have any understanding that there were any policies in place prior to the new policy that guided your decision-making as a faculty member in terms of the materials you could post without permission? By without permission, I mean without getting permission of the publisher.

A. Yes. My understanding was that I would create that list and keep it under the 20 percent. And that I thought that the university -- library would return it to me if I was out of line.

Q. And what was the basis for that understanding on your part?

A. Because it happened --

Q. Focusing on GSU.

A. Right. Because it had happened to me at UGA.

Q. Can you explain what occurred there?

A. They said you have exceeded 20 percent -- maybe that's where I got it. You have exceeded 20 percent, you know, you need to revise this before we'll put it up.

Q. And where did that communication come from at the University of Georgia?

A. Via e-mail around electronic reserves.

Q. From someone involved in the --

A. From the library.

Q. From the library. I see. And so in that situation how did you respond to that e-mail? What did you do?

A. I revised the reading list and I turned it back in.
Q. Do you recall at the time which work or works was identified as exceeding the 20 percent guideline?
A. No.
Q. And in how many instances did you receive that sort of communication?
A. One.
Q. Once. Did you prior to the new policy being implemented, did you have occasion to seek out or read or review any copyright guidelines in place governing the use, faculty use of EReserve materials at Georgia State University?
A. I read nothing.
Q. Were you aware they existed?
A. Probably nebulously somewhere.
Q. Did you ever attend a departmental meeting in which the subject of copyright was discussed prior to the new policy?
A. No.
Q. No. Did you ever attend any seminar offering on that subject?
A. No.
Q. Were you ever made aware that such offerings or educational processes were available at the

university?

A. No. Not prior to policy.

MR. RICH: Can I take two minutes off the record, please.

(Brief recess.)

THE VIDEOGRAPHER: This is tape 2. We're back on the record at 9:37:28.

BY MR. RICH:

Q. By the way, do you prefer to be called Dr. Kaufmann or Professor Kaufmann?

A. It does not matter.

Q. Ms. Kaufmann?

A. It does not matter.

Q. Are you aware that in recent months Georgia State University has begun to implement a new copyright policy?

A. Yes.

Q. How did you become aware of that?

A. Via e-mails predominantly, and then when I had turned in -- I am teaching a Maymester which starts next week and when I turned in that list they also said you need to do X, J and Z, and here's the link, go here, read this, do that.

Q. Okay. Well, let's take that in pieces.

Who sent the e-mail or e-mails advising you?

A. There have been e-mails telling about the classes that you can go to to learn about new copyright.
Q. Was that -- was it in one of those e-mails that the new policy was itself announced or was there an initial e-mail that said we want -- words to the effect, we want to advise you there is a new policy, dot dot dot?
A. I don't remember.
Q. And what you do remember is advice to faculty members that there would be educational offerings?
A. Yes.
Q. And approximately when do you remember receiving one or more of those e-mails, how long ago?
A. I'm very poor with time. At least maybe a month, two months ago.
Q. And were there identified a series of dates and places that one could go to attend these?
A. Yes.
Q. Do you remember how many offerings there were?
A. No. Multiple.
Q. Multiple. And did you in fact attend one or more of those?
A. I did go to one. I did go to one.
Q. And when was that approximately?
A. Last week.

Q. So this was after you were aware that you were going to have your deposition taken, correct?
A. Yes. But also prior to having to get my course, new course list up, I knew I had to do that.
Q. If you're able to separate the two, was your determination to attend the seminar -- let me ask the question differently.
Was your determination to attend the seminar related in any way to the fact that you were going to have your deposition taken today?
A. Yes, but that was not the sole reason.
Q. Was it suggested to you by one or more people that it would be advisable for you to attend the seminar before your deposition was taken?
MS. GARY: To the extent you are not revealing attorney client communications, you can answer.
THE WITNESS: Then I guess I shouldn't answer.
BY MR. RICH:
Q. Okay. And you did attend this seminar?
A. Yes.
Q. And who conducted it?
A. Cynthia Hall.
Q. Okay. And what form did it take? What was

the format of the seminar?

A. Another professor and I met Cynthia Hall in legal affairs and she went through documents and told us about the new policy. And we asked questions and she answered those.

Q. Who was the other professor?

A. I don't remember. I believe he was from sociology.

Q. Don't know his name?

A. No.

Q. And when you said she showed you documents, do you recall what -- was this in the form of a PowerPoint presentation?

A. That was one of them, yes.

Q. And what else did she show you?

A. Hard copies of things that are on the web electronically.

Q. And can you describe what those are to your memory?

A. They mirror -- they were the same documents that when you click on EReserve and go to what's the new copyright policy, they were some of those same pages.

Q. What did you learn from that session in terms of other relevant considerations in making decisions as to ERes postings beyond or different than your prior understanding?

A. One of the most helpful devices was the new checklist with the different categories and checking where you stand in each one of these.

Q. Anything else?

A. I learned about the different concepts on that. We went through line by line discussing what is transformative, what is nontransformative, et cetera. We did talk about issues of copyright in terms of everything that is now copyrighted whereas it was not previously. We talked about that if you ever come up against issues that you're not clear about that you would be free to call us and ask us your questions, get guidance.

Q. How long did the session last approximately?

A. Maybe an hour.

Q. You said you had had some questions and the other individual had some questions?

A. Uh-huh.

Q. What were your questions?

A. I was interested in the 20 percent. Other questions were more clarifying questions of what she was speaking of. I don't remember them specifically.

Q. What did you learn as to the current policies, relationship or dictates in relation to the 20 percent rule?

A. Cynthia advised that to be safe to keep it in single digits. But that there's no hard and fast rule, everything is contextual.

Q. As part of this session with Ms. Hall, was reference made to -- specifically to any of the ERes postings which you had been offering over a variety of semesters to your students?

A. No.

Q. Either in preparation for that session or since that session have you had occasion to apply those -- the new policy and the interpretations of it that you're gaining to those prior reading lists?

A. Yes.

Q. When did you go through that exercise?

A. I can't remember, was it Friday or Monday.

Q. Did you do that with counsel or independently?

A. No, independently, applying what we learned in that workshop.

Q. And did you go through the process of filling out a checklist as to the different works?

A. Yes, I did.

Q. And where does the work product of that reside? Where does that series of analyses sit?

A. I handed them into the library, which was my mistake. I thought they had to go in with the new list. And they said, no, that I keep them. So they are floating somewhere between me and the library. They're sending it back.

MR. RICH: May we request copies of that as soon as possible, please?

MS. GARY: Of course, we'll get copies.

BY MR. RICH:

Q. And bottom line, as a result of that how many modifications if any did you determine were appropriate to the lists of readings which you had most recently afforded students on EReserves?

A. I can't tell you how many. I can tell you that I got the Sage handbook down to single digit percentages. And any articles that I had that I could not find a direct link from GSU I took off and replaced them with other articles. So that now everything is single digit or direct link.

Q. And in terms of the numbers of excerpts from the Sage handbook, as you described it, did you retain the same numbers of takings but pare down the inclusive pages utilized, is that what I'm understanding you to have done?

A. No. I only used whole chapters and so then I deleted or took out some chapters to get the numbers down to whatever percentage.

Q. We can work from an actual example so this doesn't become a memory test. But just so I can grab the concept, am I understanding you to say you examined each prior taking -- strike that.

You're saying on a cumulative basis again instead of the 20 percent of the handbook you reduced the totality of the excerpts from the handbook so that you were down in single digits?

A. Yes.

Q. Okay. And what single digit did you determine was appropriate?

A. That I did not. I just made sure that I was under 10 percent.

Q. Did you do the math?

A. Yep.

Q. What did you end up at?

A. I don't remember.

Q. Okay. And have those -- are those, are any of those materials being used for the Maymester?

A. Yes.

Q. And have those now been submitted through the normal course through the EReserve process?

A. Almost. Not quite. I submitted them and as I said I did it incorrectly because I gave them the documents but they don't want those documents. But they do want another list that's up on the web for their counting and I have not filled out the new list.

Q. And what is the list that they want, how do you describe it?

A. I don't know. I haven't done it yet.

Q. What does it look like?

A. I haven't done it. You have to click on another -- I don't know.

Q. What information does it require, do you know?

A. I'm not sure.

Q. But they affirmatively did not want to keep your checklist?

A. Yes.

Q. Did they tell you why?

A. There's -- I don't know. My understanding is I just didn't follow the policy correctly. That's not the way it's working right now.

Q. Who did you interact with?

A. They, they is some infamous person, I don't know who this is. Someone from the library e-mailed me.

Q. Some staffer? Oh, this was not an in face interaction, this was all by e-mail?

A. This was the e-mail.

Q. I see. So did you transmit the checklist by e-mail as well?

A. No, I walked it over.

Q. And what happened after that? You got an e-mail back saying they don't want it?

A. The next morning was that you don't need to give me the fair use checklist but you do need to fill out this other form.

Q. And what's come of the checklist you sent them, do you know? Checklists. Have they sent them back to you?

A. The fair use ones?

Q. Yes.

A. I'm not sure. They said they were going to send them back. They were not in my box this morning so they're floating around campus mail somewhere.

Q. Okay. I'm going to show you a document that I'm advised has been previously marked as Exhibit 37 in this case before another witness just to jog your recollection. And I apologize, I don't have multiple copies because I didn't know we were using it.

But it bares Georgia State production number 0031377. And I'm just going to show you this and ask you to leaf through it.

A. Uh-huh.

Q. In looking at this document and the series of pages, does this appear to you to reflect or within this body of material the form you've been asked to supply now to the library?

A. I don't know. I have not done the form so I can't tell if this is that form.

Q. You haven't looked into it yet?

A. Yeah, I got the e-mail and it's like, oh, I've got more work to do.

Q. It said go to this form but you haven't done it yet?

A. And I don't have time now.

Q. Okay. When do you propose to do that, before or after the course begins?

A. That's on this afternoon's agenda.

Q. Has the Maymester begun?

A. It begins on Monday.

Q. It begins on Monday?

A. Uh-huh.

Q. And has there been any other feedback to you based on the checklist identification which you performed concerning whether any of your outcomes, fair use outcomes, are problematic from the standpoint of the library?

A. No.

Q. Is it your assumption that your works in due course are going to be posted on the course page?

A. Yes.

Q. That has not yet happened?

A. Yes.

Q. Yes?

A. Yes, that has not yet happened. They're not up there.

Q. Is it going to happen by the start of the course?

A. We sure hope so.

Q. Now, which course are you teaching the Maymester?

A. I teach 8500 in Maymester.

Q. How does a Maymester work just physically in terms of time and course hours and all?

A. Three weeks and you meet every night from 4 to 7:30. 4:30 to 7.

Q. Same number of credits as if it were a full semester offering?

A. Yes.

Q. Just very compressed?

A. Exactly.

MR. RICH: Let's mark as 98 a syllabus from the fall of 2008 for the EPRS 8500 course.

(Plaintiffs' Exhibit No. 98
was marked for identification
by the reporter.)

BY MR. RICH:

Q. Can you identify what we've put before you as Plaintiffs' 98?

A. This is a syllabus for 8500 for fall 2008.

Q. And is this a document which you put together?

A. Yes.

Q. And in fact is this the syllabus that was used in your teaching of this course in the fall of 2008?

A. I assume so.

Q. Is there anything on the face of it that looks inaccurate to you?

A. No.

Q. Now, on page one of this document you indicate two required texts?

A. Yes.

Q. Was it your intention that students enrolled in this course would purchase those texts?

A. Yes.

Q. Where were they available for purchase?

A. Some students got them through the Internet and some of the students got them through the bookstore.

Q. And what was the basis for your judgment and determination that these two texts should be purchased in their entirety by students?

A. Because they read the whole thing.

Q. Below that is listed a category saying own choice book reviews, choose one of the following?

A. Yes.

Q. Can you describe the intent of what you were doing there?

A. Each one of these is a full text study and the student had a choice of choosing one of any of these and buying that text, reading it and doing something with it.

Q. That was the required part of the curriculum?

A. Yes.

Q. As was by definition what you define as required texts?

A. Yes.

Q. And then if you flip down to where the week by week offerings are listed beginning I believe at page 7 of this document. Yes?

A. Yes.

Q. There appear a series of other assigned readings, correct?

A. Yes.

Q. And was it your intention that students enrolled in this course would timely read those additional readings?

A. Yes.

Q. And apart from the identified works on page 1 that we just described as required texts, how were these additional readings made available to students in the fall of 2008?

A. EReserves.

Q. And when -- at page 3 of this document under the heading attendance and participation in the second paragraph, you said I expect people to come to class prepared having read all assigned reading. Do you see that?

A. Yes.

Q. I take it that would have encompassed the required texts on page 1, correct?

A. Yes.

Q. And the week by week assigned readings, correct?

A. Yes.

Q. What were the consequences, if any, to students who failed to keep up with the various assigned readings?

A. I don't keep track in terms of on a daily basis, but it becomes very evident when you write your paper if you've read or not read.

Q. Is that the principal basis on which you came to understand if a given student was actually performing the readings?

A. Yes.

Q. Was it your experience to observe -- now, in these offerings of between roughly 10 or 12 students on the low end and 22 or so on the high end -- I take it was this is a seminar type room?

A. We sit in a circle, yes. Is that what you mean?

Q. Yes.

A. Uh-huh.

Q. So a room that would be compared to where we're sitting in relation to where the videographer is, how big a room would you say it is?

A. Probably from the videographer.

Q. So you have good, good visual contact with the students, right?

A. Yes.

Q. And in your experience in teaching these courses, would you see students with physical copies of the required texts?

A. Yes.

Q. And would you see students with physical copies, that is printed copies of EReserves readings?

A. Yes.

Q. And was that something that was common?

A. Yes.

Q. Okay. And prior to the new policy being implemented, did anyone anywhere any time at Georgia State University indicate to you that it was inappropriate to use EReserves for other than optional or supplemental reading?

A. No.

Q. And under the new policy including from your session with Ms. Hall, has anyone at Georgia State University or anything you've seen or read indicated to you on a going forward basis that it is inappropriate to use EReserves for other than optional or supplemental reading?

A. No.

Q. Now, if you'll turn to page 7 please. I'd like to jog your memory. And again we've asked your counsel to provide us the checklist and so recognizing this is not a memory test and that you may not have it precisely, but since you went through this process quite recently, to the best of your recollection I'd like you to go through this week by week and tell me for the Maymester what changes you made. Again, if you're wrong in detail I understand. But as best you can recall, please, what changes you made in light of the new policy?

A. In some ways that's problematic because this syllabus ended up not working as well because I put more feminist readings from the feminist handbook which was extremely resisted. And so in making the changes for Maymester I went back to the previous syllabus and made the changes from that one.

Q. By previous meaning --

A. One that I had used prior to this one.

Q. Because we have a whole series of these, if it would help you to use a different one I'm happy to.

Do you recall which course offering you worked from? I think we have them all the way back to 2006?

A. I don't remember. It might have been -- let's see, this was fall --

Q. Why don't we give you a chance to peruse them. Would it help you?

A. Yes.

Q. Give us a minute to assemble a set.

A. How about summer, maybe -- let me see the summer.

Q. We'll pull these so you don't have to guess. This is for qualitative 1, right?

A. Yes.

Q. I'll start feeding these through counsel to you.

MS. GARY: Are we marking these as exhibits then?

MR. RICH: Not yet. Right now let's let the witness find one and we'll mark the right one. Because those are the ones that I think are relevant.

MS. GARY: Here's summer 2007.

THE WITNESS: I think it was close to this one.

MS. GARY: Okay. So you think summer 2007?

THE WITNESS: Yeah. I'm guessing. I think so.

MR. RICH: Why don't we have the reporter mark Plaintiffs' 99 the syllabus for EPRS 8500 for the summer of 2007.

(Plaintiffs' Exhibit No. 99 was marked for identification by the reporter.)

BY MR. RICH:

Q. And for the record, Ms. Kaufmann, I ask you to identify the document we've placed in front of you?

A. This is the syllabus for EPRS 8500, summer of 2007.

Q. Take your time going through it, and I would ask you if this appears to be the document which you marked up, as it were, to figure out your readings for the Maymester?

A. I think so. I'm not positive, but I think so.

Q. Okay. On that assumption and subject to your jogging your recollection further, why don't we turn to page 7 of this document and if you could tell me what changes you made in terms of EReserves postings for the Maymester?

A. Okay. Bogdan and Biklen and Crotty stayed because those are the books that they're reading.

Q. Right.

A. I believe this introductory chapter from Denzin stayed.

Down to number 3, those three stayed.

4, Tisdale left. And I believe both Chaudhry and Johnson Bailey stayed. Under 5 Schwsatdt was cut.

Under 6 Villenas was cut. Under 7 I think Stake stayed. 8 --

Q. So that under 7 you don't recall anything coming out?

A. I think that stayed the same to the best of my remembrance.

Madison left. Van Maanen might be gone as well. I'm not positive.

Q. I'm sorry? Okay.

A. Van Maanen might be gone. Tara Johnson's article is gone because we don't have a link to that. I think we have a link for St. Pierre.

Narrative Inquiry Beverley is gone on number 10. I'm not sure, Chase might be gone and I think what I did was put in something from the Narrative Inquiry Handbook. Plummer is still there. Bishop is gone under 11. Ellis stayed.

Number 12 I think those all stayed.

Q. Okay. I want to understand a little more the basis on which you made these different judgments you've just testified to. When you -- how did you come --

Other than quantitatively in terms of bringing down the total takings from the Sage handbook to single digits, were there other criteria you brought to bear in making the determination under the new policy and going through the checklist that informed your judgment which chapters from the handbook to retain and which not to retain?

A. Yes. What I did was I just took all of the readings and put them under headings, this is Sage, these are journals, this is -- and then speaking of Sage specifically, I looked at -- I added up all the pages and saw what I had and where I wanted to go. From there I looked at pieces that worked well with students and those pieces that didn't work as well with students. And also looked at especially like with "Narrative Inquiry", the "Narrative Inquiry" handbook is there something that's more updated in that that would work and supplement. Supplement is probably the wrong word, but would work better in terms of the narrative article I had from the handbook.

Q. Just so I understand the testimony about Sage, did you add up all of the excerpted Sage works even if they were not all simply from the handbook, in other words, all Sage publications treated as one or within each Sage publication?

A. No. Each -- I considered Sage handbook 2000 to be one source, Sage handbook 2005 to be another because they're so different. They're not the same articles.

Q. I just wanted to clarify that.

A. And a book, an edited volume would be something, another source.

Q. In a couple of places a few minutes ago and just now in reference to the Johnson piece you indicated that you dropped certain materials because there was no link present.

A. Yes.

Q. Can you describe what you mean by that?

A. If I go on E-Journals which connects to the journals that the university has access to, that journal is not -- won't come up, which means I can't get a link to it. We don't have that journal in our database.

Q. So this is not related to whether there is a license arrangement with that journal publisher, but simply whether there is a physical or an electronic copy available?

A. No. Those that have links when you go into EReserves are those that we have bought the right to use. So if that journal doesn't come up we don't have the right to use it. Does that make sense?

Q. Well, I don't want to interpret you. Is it your understanding that all the other journals that are posted on EReserves the university already has in place a license arrangement allowing use for EReserves purposes?

A. My understanding is those journals I can access through E-Journals the university has license to use. And so if I put in a journal into E-Journals and Galileo comes up that it's not available, that the university has not -- does not have permission to use that. Therefore the ones that I have in here are the ones that I can get direct links to.

MR. RICH: Off the record for a moment.

THE VIDEOGRAPHER: Off the record at 10:10:24.

(Discussion off the record.)

THE VIDEOGRAPHER: Back on the record at 10:11:18.

BY MR. RICH:

Q. I just want to be as clear as we can for the record.

With respect to a book let's say like the handbook, what you undertook here consistent with your pedagogical needs obviously, was to buy work, assure yourself that the cumulative takings of chapters that was spread out over the syllabus did not exceed single digits, correct?

A. Yes.

Q. And that it otherwise was educationally suitable, correct?

A. Yes.

Q. Did you in going through the checklist, did you say -- stay with the handbook -- did you treat as relevant to the decision whether to include these materials in ERes any of the other enumerated factors in the checklist? And if it would be easier, we can certainly put the checklist in front of you.

A. My process was to first consider what I wanted, what worked for me in the syllabus. And then once I got that list I went through each one of those with the checklist to make sure that they followed -- they fell within fair use. And once that process was done, then I constructed the final syllabus.

Q. Did you make judgments in going through the checklist with respect to any of the materials appearing in Exhibit 99 that they did not qualify for fair use?

A. No.

Q. Were any close in your estimation?

A. No.

Q. Did any warrant in your estimation consulting with Ms. Hall or other university counsel?

A. I spoke with Ms. Hall about being confused around the fourth category of is it market value or something, my confusion around that, and asked her this seems problematic to me, you know, this is how I'm interpreting it, where am I.

Q. And what was her advice?

A. This was --

MS. GARY: Just objection if it calls

for attorney client privileged communications. So to the extent you can answer without revealing any privileged communications between you and Ms. Hall --

THE WITNESS: Right, this was not, this was not during that, it was specifically just talking about outside of that. And she said that she thought that what I was doing was right. My interpretation of that was right.

BY MR. RICH:

Q. And the interpretation you gave it was what?

A. That it seemed extremely subjective to determine the market value. And if my -- if I read it as that I would not require my students to buy the handbook, it's very expensive and they don't have that much money, and so if I do not put that reading in the students are never going to become aware that that handbook is out there and so there's no probability that the students would buy it. But if I -- so am I understanding that market value question value correctly.

Q. And her response was?

A. I think you're doing okay or something to that.

Q. So if I understand your own interpretation of what we call factor 4, the market factor, you determined that the handbook because of its cost to students would be resisted in terms of a purchase by the students?

A. Yes.

Q. And that as a result if you were to assign it what would your expectation be? In other words, if you had added it to the required text section of the syllabus, what would have happened in your estimation?

A. Well, two things are problematic. One I think the students would have been extremely upset having to spend that much money. And number two, in an introductory class they don't need to read the whole handbook.

Q. But is it your understanding that the only time it would be appropriate for -- that the only time that an educational use would exceed fair use would be if the entirety of the work were being used?

A. No. No. I think there's all four factors.

Q. And so nonetheless you're saying that a rationale for using -- for paying no permission fee for the handbook is that since the entirety of it was not being assigned it would be -- you would be uncomfortable posting it as a required purchase for the students?

A. No.

Q. I don't mean to misinterpret you. Could you restate, please?

A. My rationale is that those articles going through the fair use guidelines considering all four factors to the best of my ability fell within fair use, therefore it was okay to use them.

Q. But focusing on the fourth factor in terms of market harm, what analysis did you make of what the impact on Sage, the publisher of the handbook, would be if every professor using the handbook as a teaching tool made the same judgment you've made?

A. I did not think about that.

Q. What would your view be if every professor teaching a course drawing on the handbook made the judgment that because it was A, expensive and B, not all of it was going to be used, C, I will assign some number of chapters without obtaining a permission fee to the viability of that handbook?

A. I honestly think that Sage would have more likelihood of selling the handbook. As a student that's how I came to purchase the handbook.

Q. How would that decision-making promote sales of the handbook?

A. Because if my professors did not give me articles from that handbook and let me know its influence, then I would not as a student of qualitative research have bought that.

Q. Are you suggesting that a number of students in your course notwithstanding having unpermissioned access via EReserves actually went out and purchased the handbook?

A. I know as a student I purchased handbook.

Q. I'm asking whether you to your actual knowledge from -- in the time of your teaching of this course offering these excerpts on EReserves, how many students to your knowledge have gone out and purchased the book?

A. I do not know.

Q. Do you know of anyone who has?

A. I do not know for positive.

Q. And are you aware whether apart from purchasing the handbook there are available to universities and faculty members permissions fees for licensing excerpts of the handbook?

A. No.

Q. Something you're totally unaware of?

A. Yes.

Q. Did you and Ms. Hall discuss that as an alternative to the binary option of either having the students buy the entire work or simply post portions of it without permission on EReserves?

A. I can't answer that.

Q. Can't answer it because?

A. That was a different -- a conversation --

MS. GARY: Are you asserting attorney client privilege?

THE WITNESS: Yes.

MR. RICH: Could you define for me where you're drawing the line of privilege with respect to Ms. Hall?

And the reason I ask is you all produced to us the PowerPoint. Other witnesses whom I deposed and we've deposed have testified about the substance of the seminar offerings. This witness testified earlier about her conversation with Ms. Hall with the other professor handy. What is your position as to where the boundary line is?

MS. GARY: Our position is that the workshops that Cynthia Hall held with professors are not privileged. They were part of her general teaching capacity. But any conversations that individual professors may have had with Ms. Hall outside of those workshops specifically seeking legal advice from her with regards to copyrighted materials would be privileged.

So I believe the witness previously testified as to conversations that took place during part of this general workshop that which were not privileged. But I believe now this question is seeking information which took place outside of the workshop and is therefore privileged.

MR. RICH: We won't obviously test that during this session. But it's something we may want to consider further.

BY MR. RICH:

Q. Just so I understand it, this subject came up but you're unable to testify to the substance of the discussion?

A. Yes.

Q. And did that subject come up by your requesting legal advice from Ms. Hall on the issue of permissions fee or licensing?

A. No.

Q. Did it come up because Ms. Hall initiated a discussion of that topic?

A. Yes.

MR. RICH: It's hard for me to know how that could be privileged if this doesn't reflect a request for legal advice.

MS. GARY: If I may have a moment to confer with the witness off the record.

MR. RICH: Sure.

THE VIDEOGRAPHER: Off the record at 10:21:28.

(Discussion off the record.)

THE VIDEOGRAPHER: This is tape 3. We're back on the record at 10:23:02.

MS. GARY: Thank you.

After consulting with the witness, it is our position that there was this workshop that took place that was not attorney client privileged communications. But at a certain point after the workshop ended those conversations did become attorney client privileged and Ms. Hall indicated as such to the witness that these conversations were now protected by the attorney client privilege. And she was providing legal advice to Professor Kaufmann at that point.

So we're going to keep, if we can keep a distinction between the workshop itself and those attorney client communications after the workshop ended. And Cynthia Hall indicated this was indeed an attorney client conversation where Cynthia Hall would provide legal advice.

MR. RICH: All right. I hear the words and I again will respect that for this deposition because I can't force any different outcome here.

I want to reserve our position because I find that distinction a bit dicey and artificial. But again, I don't think we're going to resolve it here today.

BY MR. RICH:

Q. Let me ask you a different question. What is your understanding about the availability of licensing as a means for making course materials available to students?

A. After the new policy changes?

Q. Let's -- let me ask the question more generally. Well, let's break it.

Before the new policy did you have an understanding whether it was at least potentially available to faculty members to neither require students to purchase full texts at a bookstore or place excerpts on EReserves without any permissions, that at least a third alternative at least in some instances could be to secure licenses to use excerpts of those works within the course curriculum?

A. No.

Q. You had no exposure to that concept. And now post the new policy, am I correct that it was only in the course of what your counsel has indicated or regarded as privileged communications with Ms. Hall that this third option was the subject of some discussion?

A. Again, yes. And I think it also came up in the PowerPoint.

Q. And what in the PowerPoint do you recall?

A. That there is a certain cite, which I can't remember the name of --

Q. Copyright Clearance Center?

A. Yes. Yes. That you can go to.

Q. And when you went through the checklist and evaluated market harm and other possible adverse effects on the -- strike that.

When you went through the checklist including factor 4, did you give any consideration to the availability of licensing for one or more of the works you were offering for your courses?

A. No.

Q. And was that something that just didn't occur to you or you didn't feel it relevant or what?

A. No. I thought about it. The reason I did not was because it is my understanding that if it was -- came out as fair use according to the checklist then I didn't need to go there.

Q. But I believe you testified a few minutes ago that part of your fair use calculous on factor 4 involved the judgment that it would be too expensive for students to purchase the entire works, correct?

A. Yes.

Q. Now, wouldn't it have been appropriate in that situation in making a more fine tuned evaluation to have asked, well, what if the students only had to pay something less by way of a license fee for access to the materials I want to use?

A. That was not my thought process. My thought process was that I have altered the use of this textbook to follow fair use, so now it is fair use and I don't need to go there.

Q. What relevance did the -- you mentioned that during your seminar, your educational seminar, the nonprivileged part of the activity with Ms. Hall, among other things a concept of transformativeness was discussed, yes?

A. Uh-huh.

Q. What understanding did you arrive about that concept and what it means relevant to the fair use checklist?

A. I understand that anything I'm using is nontransformative. Transformative within my understanding is when you take a piece of work and you transform it into another type of work.

Q. And why was that topic discussed, to your understanding?

A. Because it is listed on the fair use checklist. We went through the checklist line by line by line.

Q. Did Ms. Hall indicate of you as to the relative importance of that factor in a fair use analysis?

A. We -- her example within the workshop was the song of "Pretty Woman" that evidently there was a court case when it was -- some of those words were taken and transformed into a rap song which then constituted fair use because it was transformative. So me it's an interesting concept.

Q. Is it a concept that you regarded as

irrelevant at the end of the day going through your checklist?

A. It was not one of the concepts that I thought applied to what I was doing at this time.

Q. Because?

A. Because I don't understand copying directly a chapter to be transformative. Transforming it to one electronic or one mode of text to another does not transform the piece.

Q. So that in evaluating that factor it would cut against fair use, correct?

A. Yes.

Q. And so you checked that box --

A. Yes, I did.

Q. -- negatively.

A. Yes.

Q. But it was not in any way dispositive of your analysis, correct?

A. There was enough on the other side to outweigh it.

Q. Did Ms. Hall indicate that all fair use checklist factors are equal as it were?

A. I did not understand them as being some weighing more than the others.

Q. How did you evaluate the various checklist factors that go to the issue of relevance to the course, importance to your teaching objectives and the like, how did you apply those criteria to these works? By that I mean the works on Plaintiffs' 99.

A. I applied that the pieces were important to what I wanted to teach. And the way I did that was because I had made the categories of the theories or concepts that I wanted to teach and then I found the best pieces that I could to convey those concepts. Therefore those pieces were important to teaching that concept because that's why they were chosen.

Q. And by definition the pieces you selected by taking the entirety of the chapter contribution, say in the case of the Sage handbook, you took the heart of those contributions, indeed you took the whole contributions, correct?

A. No. I think that's -- it depends if you understand the whole to be the chapter or the whole to be the edited volume. And I understood the whole to be the edited volume.

Q. Do you have any understanding as to whether when you made a contribution to Sage -- I'll butcher the name of that.

A. The CYT?

Q. Yes. Did you understand that to be a

copyrighted work?

A. My understanding from the workshop is that if it's a journal then the article is a whole. If it's an edited volume, then the edited volume is a whole.

Q. I'm asking a slightly different question. Do you have any understanding whether individual contributions by individual educators like yourself to handbooks such as Sage handbook themselves are copyrighted works? Do you know the answer to that?

A. No.

Q. Now, again, just so I understand the methodology you employed here, if you would turn to page 8 of this document under section six, the first listed work is an excerpt from something called "The Journal Of Contemporary Ethnography", you see that?

MS. GARY: What exhibit are we looking at?

MR. RICH: Sorry, I'm looking at fall '08.

BY MR. RICH:

Q. Let's go to page 9, section 7 please, the excerpt from Vanderstaay in "The Journal Of Contemporary Ethnography".

A. Yes.

Q. If I understand you correctly that your methodology there was to ascertain whether there was a link to this in the E-Journals system?

A. Yes. I made sure that it was in the databases paid for by GSU.

Q. And by paid for, your understanding was that electronic use via EReserves fell within a licensed arrangement between the university and the journal publisher?

A. Yes.

MS. GARY: Objection. Asked and answered. You may answer.

THE WITNESS: That was my understanding.

BY MR. RICH:

Q. And if you ascertained that that was not the case as to a journal, you did not independently undertake a fair use analysis?

A. No. If it was not there I switched to -- I found another article.

Q. And what was your reason not to subject journals not falling within that licensed category to the checklist in any event, just so I understand that?

A. Because I wanted to be sure that I was safe, that I was doing it -- that I was following the policy. And if it was not -- if we didn't have rights to it and I was using the whole, then I assumed that that was not fair use and so I found another article.

Q. So if you were using the whole of a contribution to a handbook that was okay so long as it made the checklist, but if it was a contribution to a journal that was the whole article you drew a different distinction?

A. Yes. My understanding from the workshop was that an edited volume is the whole, but if it's a journal it's the article that's the whole.

MS. GARY: I think the witness needs a break right now.

MR. RICH: Of course, please.

THE VIDEOGRAPHER: Off the record at 10:36:15.

(Brief recess.)

THE VIDEOGRAPHER: Back on the record at 10 42:51.

BY MR. RICH:

Q. What is your understanding as to where dollars would be located if you as the faculty member made a decision that an item you wanted to use in the course exceeded fair use but that it would be appropriate to pay a permission fee or a license fee to use that item from the publisher, where would the monies to do that come from as you understand it?

A. I don't know.
Q. Is that anything you've given consideration to?
A. No.
Q. It's not anything you've discussed with anyone?
A. No.
Q. Including Ms. Hall?
A. No. Where the monies would go?
Q. Where the monies would be found, who would make the payment, where the money to make the payment would come from?
A. Students.
Q. You're assuming?
A. Yes. Yes. Was that talked about in the workshop?
Q. Yes.
A. I'm not sure. Very likely.
Q. What's your recollection about what was said about that?
A. I don't remember.
Q. Do you remember if this was part of the formal presentation made by Ms. Hall or part of a Q & A?
A. It was talked about somewhere. I don't remember where, in which context.

Q. And have you formed a view as to the appropriateness of students making some payment to accommodate the licensing of copyrighted works?

A. No. I have not come to that decision.

Q. Have any of your decisions going through the checklist been influenced by the issue of where resources would be identified whether at GSU, out of your own pocket as it were or out of students in determining whether or not a particular proposed use is or should be a fair use?

A. My determination was specifically on did it fall within fair use. And if it did not fall within fair use according to the checklist I chose not to use it.

Q. But as we'll get to shortly, do you recall that a factor listed, a checklist factor under factor 4 as whether or not licensing or permission is available for the work?

A. Yes.

Q. Is that something you considered in the case of the works that you went through?

A. No.

Q. So what I'd like to do now is to -- do we want to remark those?

MR. LARSON: Let's remark them because

the previously marked version had writing on it and checks filled out.

MR. RICH: Let's mark as Plaintiffs' 100 a copy of what I believe is the fair use checklist in use now and which we'll verify is the document you used.

(Plaintiffs' Exhibit No. 100 was marked for identification by the reporter.)

BY MR. RICH:

Q. Do you recognize this document?

A. Yes.

Q. Is this the document you used to go through the process you testified to a bit earlier?

A. Yes.

Q. And this is the document which -- what did you do, did you put Xs or checkmarks in the boxes, how did you physically do this?

A. Yes, put lines through them.

Q. And you did one per course reading offering, correct? You filled out a checklist for each separate proposed offering, correct?

A. Not -- except for E-Journals that we had links to.

Q. Fine. But with respect, for example, to each chapter proposed to be used from the Sage handbook there would be a separate checklist --

A. Yes.

Q. -- correct?

A. Yes.

Q. This was the body of material which you forwarded to the library?

A. Yes.

Q. Now, if we had the actual checklist, which unfortunately we don't, we could have short circuited this examination a bit, but I'm going to ask you working from the summer of '07 syllabus and with reference to the checklist on a sample basis to walk me through the process you went through in evaluating whether certain proposed EReserve offerings qualified for a fair use.

Now, as you approached this for the Sage handbook materials, am I correct that you initially went through chapter by chapter?

A. Uh-huh.

Q. And then at the end of that process you saw what the cumulative pages would be and then you, what, as a phase two pared down, is that basically how you did it?

A. Uh-huh.

Q. You have to speak for the record.

A. Yes. Sorry.
Q. Okay. So let's start then with the entry at the top of page 8 of Exhibit 99, please, which is the introduction I take it to the Sage handbook third edition, correct?
A. Uh-huh.
Q. Pages 1 to 32.
A. Yes.
Q. Please walk us through in narrative fashion if you're comfortable with it how you made the assessment from this checklist.
A. Okay. I filled out the top, of course, article, references, et cetera.
So under factor 1 on factors which weigh in favor I checked it's nonprofit educational and also that it's teaching and use is necessary to achieve intended educational purpose.
Q. And on that factor how did you come to that conclusion?
A. As I've discussed previously, that was the reason the piece was chosen in the first place.
Q. Would that not almost be an automatic checkmark having made a determination that you wanted to use material for the course in your professional judgment?

A. It becomes automatic in the sense that I made that decision prior to the checklist because I specifically had the theory or the concept, the category to which I wanted to teach, and found those articles or chapters which spoke to that purpose.

Q. Well, wouldn't it be your expectation that a typical faculty member at GSU would initially select the desired reading materials based on his or her professional judgment of what suits the pedagogical purpose of that course as opposed to back into that as to what might meet a checklist?

A. I would assume.

Q. You can keep going.

A. Under --

Q. So you had three checkmarks I take it on the weighs in favor of fair use on box -- on factor 1?

A. Yes.

Q. And on the right hand column?

A. Nontransformative.

Q. Any others?

A. No.

Q. So factor 1 would have been awarded to fair use?

A. Yes.

Q. Factor 2.

A. Under weighs in favor, it's published, it's factual or nonfiction, and it's important to educational objectives.

Q. Did you regard that third objective as meaningfully different from the last one at the bottom of factor 1, use is necessary to achieve your educational purpose?

A. I had problems differentiating the two.

Q. Okay. Go ahead.

A. Under 3 --

Q. Could you go to the right side of box 2?

A. Excuse me. I checked nothing on the right. Pretty much opposites.

Q. So factor 2 would be awarded to fair use?

A. Yes.

Q. Factor 3?

A. Small portion used.

Q. How did you determine what small meant?

A. Being conservative it was single digit percentages of the entire work.

Q. Notwithstanding in this case that this was the entirety of the work of the contributor -- well, I take it back.

This may not be the quintessential example of the point I'm asking, but if there were a chapter offering and it was from a contributor, a colleague of yours in the field, notwithstanding that was the entirety of the intellectual work product of that contributor it would still be by your understanding of the guidelines, as it were the policy, a small portion of the work because the work you understand is to be defined as the entirety of the compilation, correct?

A. Yes.

Q. Okay. Go ahead.

A. Small portion, it's not significant to the whole. It's not the heart of the work is how I interpreted that.

Q. How would you evaluate that factor in the context of a handbook of 43 or so different excerpts, would any single chapter in your estimation constitute the heart of the work?

A. No. No.

Q. By definition would no contribution constitute the heart of the work?

A. I did not understand any contribution within the handbook constituting the heart of the work, but much more illuminating the multifacets that constitute qualitative research.

Q. Would you explain that last? I didn't understand the last part of your answer. I'm sorry.

A. To me there was no piece within the handbook or really within qualitative research that constitutes the heart. It's too multifaceted.

Q. Would an introduction, if one were dealing with an introduction that was the form of an executive summary or an overall synopsis of the contents of a work followed by a series of discrete works, could that in your estimation ever constitute the heart of the work?

A. I don't think so considering that the example that I have is "Singing In The Rain". So if you take 30 seconds of Gene Kelly singing "Singing In The Rain", you have constituted the heart of that work regardless of it's a very, very small portion.

I don't think qualitative research works in that same manner. You don't have that something that can grasp the concept of the whole of qualitative research.

Q. In taking six or eight excerpts from the handbook that meet the pedagogical needs of the course, why weren't you taking the heart of that work as it relates to the pedagogical needs of your course?

A. My understanding is if I am taking a single digit percentage then -- and there is no heart, I am neither taking more than my fair share nor am I taking the heart because there is no heart. Something unnarrative, something on this, something on that are different facets, but they're not the heart.

Q. Is it accurate that in making the selections you made from the handbook you selected those chapters that were most centrally relevant to your teaching objectives?

A. Yes.

Q. Okay. Keep going.

A. And amount taken is narrowly tailored to my purpose.

Q. What do you understand that factor from your education from Ms. Hall or otherwise to be looking to determine?

A. I took it to mean that it is specific to my purpose and it also is narrowly a small portion of the whole. Speaking to both of those factors.

Q. Does it have any element beyond any of the other independently stated objectives such as important to educational objectives, use is necessary to achieve your intended educational purpose, did you view it as somewhat cumulative?

A. Yes.

Q. So you checked all three?

A. Yes.

Q. And then on the right side?

A. None.

Q. Okay. So the third factor is also awarded?

A. Yes.

Q. Okay. Factor 4?

A. I checked that there was not a significant effect on the market.

Q. And again your reasoning was?

A. That I was not going to have them buy the whole handbook and that -- so my choices were to introduce them -- introduce them to that work or not use that work. And by introducing them to the work the only thing that I could see happening is having the propensity that they may buy the work but not take away from that.

Q. And did you make that judgment uniquely to the handbook as opposed to your assessment of any other works that you put through the fair use checklist?

A. I was making that judgment specifically on the handbook in this case, yeah.

Q. And were there other works where you made the judgment that affording students access to a portion of the work without license fee could arguably stimulate their purchase of the work at a later date?

A. Uh-huh. Alfred, for example.

Q. And were there works where you made the determination that it was unlikely that that would eventuate in a purchase of a work?

A. No. No.

Q. So is your basic premise that simply affording students access on an unlicensed basis to excerpts of a work which are pedagogically important to the field can't almost by definition constitute market harm to the publisher because it may eventuate in some unknown number of cases in future purchases of the work?

A. I think you're saying a lot more than that I said.

Q. How have I overstated or misstated your point?

A. Because you're good at this.

My thought process was not as thought through as yours. My thought process was specifically what I had stated without the added pieces that you put in.

Q. Why don't you keep going. So you checked the first check box here, no significant effect on market?

A. Uh-huh. And also I think we discussed the possibility of it stimulating.

Q. Did you interpret that as it suffices that there's a possibility that it would stimulate, did that suffice to check that box in your view?

A. Uh-huh. I did.

Q. What about the third box?

A. I did not check the third.

Q. What do you understand that to mean?

A. I was thinking of other pieces by the same author or same publishers in other places which, you know, I don't know everything that's out there, there may be similar things. This at this time was what I had and what I was working with.

Q. Any other boxes get checked on the left hand column?

A. Restricted access.

Q. What did you understand that to mean?

A. That only the students within that class have passwords to EReserves for a limited amount of time, which was the time of the course.

Q. Do you own the handbook?

A. Yes.

Q. And licensing or permission unavailable, I know we touched on this before I put this before you, am I correct in recalling that you said it was not something you gave particular consideration to in going through the checklist?

A. Yes, that is true.

Q. So I count three checks on this side of the ledger?

A. Yes.

Q. And what about on the right side?
A. Required classroom reading.
Q. What about licensing or permission reasonably available?
A. No, I did not check that.
Q. Is that based on any investigation?
A. No.
Q. Numerous copies made or distributed, what was your understanding of what that means?
A. No, I don't consider 16 to 20 to be numerous.
Q. What would you consider numerous?
A. I don't know. But I would think it would be much more than that.
Q. What about repeated or long term use that demonstrably affects the market for the work?
A. I did not check that.
Q. What was your understanding of what that's intended to get at?
A. I did not consider it to be long term since it was for the semester.
Q. How about repeated?
A. I didn't go there.
Q. Because?
A. Didn't compute.
Q. Wouldn't have fit, in other words, the fair

use outcome?
A. No, that's not what I said. I said --
Q. You just read through it?
A. No. What I said was it didn't compute. It didn't register in my mind in that way.
Q. Sitting here today would you have checked that box?
A. That multiple semesters counted repeated, yes.
Q. And sitting here today, if I were to represent to you that licensing or permission or you were to determine that licensing or permission was reasonably available through say a Copyright Clearance Center would you have checked that box if you had that knowledge?
A. Yes. Yes.
Q. So you did check required classroom reading, right?
A. Yes.
Q. Anything else?
A. No.
Q. So how did you award the fourth factor?
A. The way that I did it it was in favor.
Q. And sitting here today with the benefit of any of our discussion, might you have made that evaluation differently if you were doing it again today?
A. What were the tallies?

Q. Well, I have three on the left, I'm hypothesizing or asking you to hypothesize that licensing or permission is reasonably available. I'm asking you to adopt that as true.

A. Yes, and repeated.

Q. And repeated?

A. Uh-huh. So it's three to three.

Q. And required. Three to three.

A. So that would be against for me.

Q. And then what would happen as you understand the process if the factor 4 was a tie or even I'm hypothesizing if factor 4 cut against but your first three factors favored, what's your understanding of what happens there?

A. My understanding according to the front up here under instructions, where factors -- where fewer than half of the factors are in favor of fair use, instructors should seek -- or factors are evenly split consider, but if they're three to one, then it is considered fair use.

Q. And did Ms. Hall or anyone else indicate to you that factor 4 among the factors should be given any different weight than any of the first three factors?

A. No.

Q. Now, in going through this process with each of the Sage excerpts, just so I'm clear, in determining small portion used, that was done looking at each chapter excerpt as against the whole?

A. Yes, edited, in an edited book, yes.

Q. Yes. And so that small portion determination was made there and that as you've testified to the ultimate determination of how many chapters to use was -- am I correct that it wasn't driven by the checklist per se but by other considerations?

A. No. I think that the checklist very much has something to do with how much I would consider using.

Q. How did you use the checklist in making the ultimate determination of how many chapters to use from the Sage handbook?

A. By making sure that it was a single digit percentage.

Q. And what in the checklist dictated you doing that?

A. But that was only one factor. I cut them down to single digit and once I had a single digit amount I went through the checklist with each article that I had on my list for possible use.

Q. I thought earlier you testified it may have occurred the opposite way. And maybe I wasn't clear enough with my questioning.

Just so I'm clear about methodologically what you did, having had your discussion with Ms. Hall, did you go back before employing the checklist and pare down to single digits the total proposed takings from the handbook?

A. Yes. I took everything off the syllabus, everything that was Sage 2005 constituted a list. I pared that list down to single digit. Then I went through with this and evaluated each piece that was on that possible list to use.

Q. Okay. If we were to have the checklist in front of us with respect to each of the Sage chapters, would the checkmarks be identical?

A. Uh-huh.

Q. Process didn't result in any differentiation between those chapters as you did it for each?

A. Within this context, no.

Q. All right. And did you -- was it a meaningful process to go chapter by chapter or was it pretty obvious to you once you had done it for one that all of the others would sort of follow as a course?

A. I think within the same context then they all pretty much fell within the same checklist.

MR. RICH: Give us a second.

(Discussion off the record.)

BY MR. RICH:

Q. If you could turn to page 9 of this syllabus, please.

You indicated some uncertainty whether on the last excerpt under session 8 the Van Maanen piece, whether that was in or out --

A. Uh-huh.

Q. -- according to my notes. What was your thought process there? And was that a product of going through the checklist?

A. No. No.

Q. What was the reason then for the decision, whatever it was?

A. Primarily it's a piece that confused students because theoretically it presented issues that they had read about that were presented theoretically different and they were not able to deconstruct the differences between the two. So it hindered their learning more than it helped.

Q. Are you familiar with the concept of coursepacks?

A. I have bought coursepacks as a student.

Q. And what do you understand coursepacks to be?

A. You go to the copy store and buy a coursepack.

Q. And when you bought them, what did they comprise typically?

A. Articles and readings.

Q. Do you have a recollection that their contents were in any way or materially different from the sorts of compiled readings which constitute the EReserve offerings that you have been giving to your students at Georgia State University?

A. No, I've not thought about any differences or similarity.

Q. So in theory another technique by which substantially similar materials could be offered to students, your students, would be through a coursepack, correct?

A. Yes.

Q. Have you ever used that vehicle?

A. No.

Q. Have you considered using it?

A. No.

Q. Is there a reason that you didn't view that as a viable alternative to posting works on EReserves?

A. No, I think it's more that with the electronic turn everything becoming electronic and it's just a newer way to do it.

Q. Do you have an understanding with respect to the practice at GSU in seeking and obtaining copyright permission when works are offered through -- for distribution to students through coursepacks?

A. No.

Q. If I were to represent to you that in each and every instance permission is sought with respect to each material contributed in coursepacks, sitting here today is there any logical basis for distinguishing that practice for affording students access to materials in physical bound coursepack form versus offering potentially the same materials through the EReserve system without securing copyright permission?

A. Are you asking if I would consider that?

Q. I'm asking whether sitting here today you can draw any logical conclusion as an educator and as someone who puts together and offers course materials for that distinction in the practice at GSU?

A. No.

Q. Does it seem logical to you?

A. No.

Q. If it were the case that materials were offered to students in coursepacks and license income were flowing to publishers and the only reason that practice and that income stream stopped was because of the migration of those materials to EReserves, would you believe that to be a fair and appropriate outcome?

A. I don't think that I am educated enough to make that determination. At this point I do not understand if it constitutes fair use why I would do a coursepack.

Q. Have you become aware of any communications within Georgia State University discussing the relative attributes of using coursepacks to provide reading materials to students versus using the EReserve system?

A. No.

Q. Have you had occasion to discuss that with any of your colleagues on the faculty?

A. No.

Q. Have you ever had any feedback from your students about the cost of educational materials?

A. Yes.

Q. Tell me about the tenor of those discussions.

A. It's not unusual at the beginning of the semester to hear students mumbling about the cost of books for their courses.

Q. And what if any impact has that had on your determination of how to provide materials to your students for course work?

A. It makes me very conscious of the cost of textbooks.

Q. And have you ever -- have you ever expressed to students that they might think of any countervailing considerations including that the cost of creating these very materials and a reasonable profit needs to be found somehow?

A. No.

Q. You do believe that, don't you?

A. I have not thought about it.

Q. Can you tell me what courses you will be teaching this coming summer term as well as in the fall for '09?

A. Yes, I'm teaching 8500 Maymester. I'm teaching 8510 for summer short session. In the fall I'm teaching 8500 and I'll be teaching one other course but I'm not sure what it is yet.

Q. And in constructing the reading materials for those courses starting with 8500, is it your intention to use essentially the same if not identically the same materials as you now created for the Maymester?

A. Yes. Yes. The ones that I have gone through the checklist, yes.

Q. Yes. And have you gone through a similar process using the checklist with respect to materials intended to be used for the 8510 course?

A. Not yet.

Q. When do you expect in the normal course of things you would do that?

A. Within the next couple weeks.

Q. And do you have any preliminary sense knowing the range of materials offered in that course by you whether certain modifications will also be appropriate?

A. I need to go through that. I don't know at this time.

Q. If I were to show you the last such syllabus, would that assist you in making at least a preliminary judgment?

A. Uh-huh.

MR. RICH: Why don't we mark that. We'll mark as Plaintiffs' 101 what I believe is a course syllabus for EPRS 8510 for spring '09.

(Plaintiffs' Exhibit No. 101 was marked for identification by the reporter.)

BY MR. RICH:

Q. And Professor Kaufmann, can you identify what we marked as Plaintiffs' 101?

A. The syllabus for EPRS 8510 from spring '09.

Q. Thank you. And this is the term just ending?

A. Yes.

Q. And how many students are in this course presently?

A. Oh, shoot. 16 approximately.

Q. And does that accurately reflect the assigned readings for the course?

A. Yes.

Q. Including the week by week readings?

A. Yes.

Q. And were these readings determined at the time they were determined, that is the EReserves postings, under your prior 20 percent rule?

A. This was before the new policy, yes.

Q. Yes. And so now with an eye to the new policy, I would appreciate it if you would course through the list which is generally shorter than I see the other in terms of numbers of works, anyway, and what you feel might or might not warrant modification in the future offering under the new policy.

A. Well, what I'd have to do is go back to my categorizations and make sure that the readings that I took out of the handbook constituted single digits. I would also make sure that each journal article that was listed was -- the link was provided, that we had licensing for that.

Q. So in week 5 --

A. Yes.

Q. -- Coover, that's a -- is that a chapter from a --
A. An edited book.
Q. An edited book?
A. Uh-huh.
Q. Would you see any reason to modify the offer of that?
A. I would go back and see how long the book was.
Q. And if it met the single digit --
A. Then I would keep it if it were the only work out of that book.
Q. Okay. And with respect to the handbook selections, I think you've testified what your practice would be?
A. Uh-huh.
Q. Similar to what we've discussed, yes?
A. Yes.
Q. And the Harper contribution?
A. I would make -- talking about pictures, I would make sure that "Visual Studies" was a journal that we have access to.
Q. And the contribution of S. Pink to the "Qualitative Research Practice"?
A. I'd make sure that constituted less than 10 percent of the total.

Q. Coursing the rest of this list do you see any other works subject to the two factors you identified, namely percentage of the whole and whether there were links to the electronic journal database that you would either take out or modify as to --

A. Well, I would do that first. And then after doing that everything that was left that I wanted to keep I would go through the fair use list, checklist with. But there's no reason to do the checklist if it's out of the game from the start.

Q. Right. Henceforth, do you anticipate in adopting the checklist investigating the availability of licenses or permissions to use any of the works that you would propose to offer by EReserves?

A. I believe at this moment what I would do is contact legal affairs and talk to them about if it fails the checklist, where does that weigh in, what do I need to do.

Q. Now, did you understand the single digit guidance from Ms. Hall to be a hard practice limitation?

A. No.

Q. What's the fairest way to characterize that?

A. My understanding from her discussion was that it has not been directly stated by law what the percentage is that constitutes a small portion. And that there was this 20 percent floating around but that perhaps to be really safe to use single digits. But that was only her judgment and not hard and fast law.

Q. Did you develop any understanding that if even taking account of that advice you were to determine that it was pedagogically desirable to offer in toto some double digit percentage from, say, the Sage handbook, whether that would create some red flag or trigger some review mechanism where someone else would say, well, let's take another look at it?

A. I do not know if -- I knew it was supposed to be a red flag for me and I needed to change that. I don't know what the external mechanisms for control or if there are.

Q. In this session with Ms. Hall, did she indicate to you that your preexisting practice of taking the quantity of excerpts from the Sage handbook which you did was a dangerous or unlawful or unwise practice to continue?

A. No.

Q. Did you discuss the specifics of the excerpting practices from the Sage handbook?

A. No.

Q. Do you have any knowledge of what percent of GSU faculty have signed up for or have actually taken

any of these seminar offerings on the new policy?
A. No.
Q. Have you discussed with your colleagues whether they either have or intend to participate in those?
A. No.
Q. Do you have any expectation knowing faculty as you do what percentage are going to avail themselves of this?
A. No.
Q. Is there any adverse consequence to a faculty member in terms of good standing in the university if he or she fails to attend one of these sessions?
A. I do not know.
Q. Are they mandatory?
A. I do not know.
Q. What did the e-mail say?
A. I don't remember. I remember -- I do not know if it's mandatory.
Q. Who sent the e-mail, Cynthia Hall?
A. I do not know.
Q. Did you view it as mandatory?
A. I viewed it extremely necessary for the practice that I do.
Q. Meaning by the practice that you do,

meaning --

A. That I needed to do that for me.

MR. RICH: Why don't you take this time to change the tape.

THE VIDEOGRAPHER: Off the record at 11:26:23.

(Brief recess.)

THE VIDEOGRAPHER: This is tape 4. We're back on the record at 11:33:36.

BY MR. RICH:

Q. Just a general question. Do you have an understanding whether the new copyright policy applies simply to course materials offered on EReserves or more broadly across all platforms on which such course materials may be offered?

A. All platforms.

Q. So it would include coursepacks?

A. I would assume.

Q. And it would include materials posted on ULearn?

A. Yes.

Q. Let's now, I'm just going to mark for purposes of your identifying a series of prior syllabi of courses that you offered. I won't have a lot of specific questions about them.

102 is the syllabus for the fall 2006 offering of EPSF 9280 called interpretive inquiry.

(Plaintiffs' Exhibit No. 102 was marked for identification by the reporter.)

BY MR. RICH:

Q. Can you able to identify this document?

A. Yes.

Q. What is it?

A. The syllabus for EPSF 9280 from fall 2006.

Q. And how did this course relate substantively to the subsequently offered 8500 and 8510 courses?

A. This was the first course that I taught when I came here. And I was told to teach this course but there was no direction for it. And so I constituted the course as I wanted it to be.

Then this was a special course that I don't think is really offered much and I took -- because it worked so well I really took this as the ground work for 8500.

Q. So you've not taught this course in this form again, is that correct?

A. No.

Q. And does this syllabus accurately set forth the assigned readings for the course?

A. Yes.

Q. And to the extent constituting other than required texts, those readings were made available to students via the EReserve system?

A. Yes.

MR. RICH: We'll mark as Plaintiffs' 103 the spring 2007 syllabus for the 8500 course.

(Plaintiffs' Exhibit No. 103 was marked for identification by the reporter.)

BY MR. RICH:

Q. Ask you to identify this document?

A. Oh, sorry. EPRS 8500, qual 1, syllabus from spring '07.

Q. And once again I'll ask you whether the reading materials set forth in this were -- accurately reflect the assigned readings for this course in the spring 2007?

A. Yes.

Q. If I were -- well, strike that.

And the listed course readings apart from required texts were made available to students via the EReserve system, correct?

A. Yes.

MR. RICH: Next is Plaintiffs' 104, which is the summer 2007 syllabus for the 8510 course.

(Plaintiffs' Exhibit No. 104 was marked for identification by the reporter.)

BY MR. RICH:

Q. And I'll ask you to identify this document.

A. EPRS 8510 syllabus for summer 2007.

Q. And am I correct that the assigned readings for this course, that this accurately sets forth the assigned readings that were used in this course?

A. Yes.

Q. And again, those assigned readings to the extent not required texts to be purchased were made available via EReserves?

A. Yes.

MR. RICH: Plaintiffs' 105 is the fall 2007 syllabus for the 8500 course.

(Plaintiffs' Exhibit No. 105 was marked for identification by the reporter.)

BY MR. RICH:

Q. Can you identify this document?

A. Syllabus for EPRS 8500, fall 2007.

Q. Does this accurately set forth the assigned readings for this course?

A. Yes.

Q. And apart from required texts, is it correct that those readings were available to students and accessed by students from the EReserve system?

A. Yes.

MR. RICH: Plaintiffs' 106 is the spring 2008 offering of the 8510 course.

(Plaintiffs' Exhibit No. 106 was marked for identification by the reporter.)

BY MR. RICH:

Q. I'll ask you to identify this document.

A. The syllabus for EPRS 8510 spring 2008.

Q. Does this syllabus accurately set forth the assigned readings for this course?

A. Yes.

Q. And were those assigned readings to the extent not required texts made available to students and accessed by students and copied as they wished by students from EReserves?

A. Yes.

MR. RICH: Plaintiffs' 107 is the summer 2008 8510 offering.

(Plaintiffs' Exhibit No. 107
was marked for identification
by the reporter.)

THE WITNESS: This is the syllabus for EPRS 8510 summer '08.

BY MR. RICH:

Q. Thank you. And does it accurately set forth the assigned readings for this course?

A. Yes.

Q. And were those readings apart from required texts offered on EReserves?

A. Yes.

Q. Thank you.

MR. RICH: Next mark as Plaintiffs' 108 a syllabus of one of your colleagues, Ms. Fournillier, for summer 2008. This is for the 8500 course.

(Plaintiffs' Exhibit No. 108
was marked for identification
by the reporter.)

BY MR. RICH:

Q. Have you ever seen this document?

A. No.

Q. How were these documents physically prepared?

A. How did she prepare hers, I don't know.

Q. There seems to be a fairly standard format to them in other words. How do they get generated?

A. Each professor makes their own.

Q. Okay. If you would pull out Plaintiffs' 105 from your pile, please. And I'd ask you to -- 103, they're both similar, and compare the descriptive language from both documents as well as the actual course offerings, I'll ask you a question or two about them.

A. Uh-huh.

Q. It's been suggested that you focus on 103 for this purpose.

A. Okay.

Q. Do you notice the substantial similarity between the two?

A. Yes.

Q. Does that surprise you?

A. No.

Q. What accounts for it?

A. Because I gave her my syllabus so she could teach the course and do with it what she wanted.

Q. I believe when I asked you earlier this morning if you had any knowledge of similarity or not and you indicated no.

A. I don't know what she did with it. I gave her the syllabus and she could take or not take what she wanted. I never saw what she did.

Q. Were you the original author of the text about course structure and the listed course objectives and all?

A. Some of it comes from my experience being mentored at UGA, as I talked about before. And so it's all a takeoff from that. Some remains the same, much remains changed.

Q. And you invited her to use as much of this as she felt comfortable doing if she wanted to?

A. Yes.

Q. And what do you make of the fact that in her selection of course readings they likewise mirror closely if not identically the readings which you had assembled for the course?

A. What do I make of that?

Q. Yes.

A. It worked for her I guess.

MS. GARY: Which pages are you looking at for the course reading?

MR. RICH: I was just comparing Plaintiffs' 108 with Plaintiffs' 103.

MS. GARY: Okay.

MR. RICH: I mean, we're not going line

by line, but there's obviously a lot --
what appears to us a lot of similarity.

BY MR. RICH:

Q. Have you ever discussed with Ms. Fournillier any aspects of copyright law as they related to this course reading list?

A. No.

Q. And under the new policy what expectation do you have as to what Ms. Fournillier will or is likely to do in terms of her own determinations of fair use?

A. I have not discussed with her what she will do.

Q. Is it conceivable that she will make different determinations as to the same materials than you make?

A. I would think so.

Q. Would that make sense to you?

A. Yes.

Q. How so?

A. Well, if I made different determinations then I would assume that she may make different determinations, but as I said, I can't know what she will do.

Q. But you have no plans to coordinate with her on that?

A. We do not normally coordinate.

Q. Is she continuing to teach the 8500 course?
A. I believe she's slotted to teach it this summer.
Q. I just want to review my notes and see if I have anything else.
Have you ever used the ULearn system to post course readings?
A. When I first came I attempted to use WebCT, it was before they changed to ULearn. I used it a little. It was more of a time intensive and learning curve than I was willing to use and I don't think I posted readings on there, but I'm not positive.
Q. And do you have any intention to use ULearn for that purpose on a going forward basis?
A. No.
Q. If you did do you understand it would be subject to the same guidelines of copyright law?
A. Yes.
MR. RICH: I have no further questions.
MS. GARY: I have just a few clarifying questions.

EXAMINATION

BY MS. GARY:
Q. If you could, Professor Kaufmann, turn to Exhibit 99 which is the EPRS 8500 summer 2007 syllabus.

And I believe this is the one you said you revised for use in the Maymester course?

A. Yes. That I used for the revisions, uh-huh.

Q. If you could to the best of your knowledge -- let's turn to page 7, and let us know which of these works were journal articles that were licensed through GSU through the library?

A. I don't remember all. Let me see.

Q. Okay. Just if you can identify any.

A. Down through 3 I don't think there's any journal articles. Chaudhry is a book, Johnson Bailey is a book, Tisdale is a book, Crotty, Schwsatdt, those are books. Through this page there's no journals. And Sandstrom is not. Vanderstaay page 9 is a journal article.

Q. And was that one that was licensed, that you were able to obtain through GSU?

A. Yes. Yes. Tara Johnson week 9 was not. It is a journal article but we did not have access.

Q. Okay.

A. I don't even know how to pronounce it, the sociology, qualitative sociology on week 11, we have that. That's it.

Q. And then one more question. Let's flip to Exhibit 101, Plaintiffs' Exhibit 101 which is EPRS 8510 spring 2009 syllabus. And you mentioned that you were going to determine whether the journal articles listed here were available through the GSU library?

A. Yes.

Q. What will you do with those articles if you determine that they're not available through GSU?

A. Then I will not use them and I'll find replacements in other journals that I have access to.

MS. GARY: That's all my questions.

MR. RICH: Just a couple follow-up questions.

FURTHER EXAMINATION

BY MR. RICH:

Q. You understand with respect to journal articles that are licensed through the library that royalty payments are made by Georgia State University to the publishers for the purpose of allowing their electronic usage, correct?

A. Yes.

Q. And you also understand that when a professor such as yourself uses a chapter from a handbook such as Sage on EReserves without making a permissions payment that no royalties are flowing with respect to that authorial contribution, correct?

A. Yes.

Q. Does that make any sense to you?
A. Under this, yes.
Q. By this you're referring to the --
A. The checklist for fair use.
MR. RICH: I have no further questions.
MS. GARY: That's all for me.
THE VIDEOGRAPHER: This concludes the deposition. We're off the record at 11:52:29
(Deposition concluded at 11:52 a.m.)

E R R A T A   S H E E T

I, the undersigned, JODI KAUFMANN, do hereby certify that I have read the foregoing deposition and that, to the best of my knowledge, said deposition is true and accurate (with the exception of the following corrections listed below).

PAGE / LINE CORRECTION

------/---
------/---
------/---
------/---
------/---
------/---
------/---
------/---
------/---
------/---
------/---

---------------   ----------------------------

NOTARY PUBLIC   SIGNATURE

DATE--------------

MY COMMISSION EXPIRES:

C E R T I F I C A T E

G E O R G I A:
FULTON COUNTY:

I hereby certify that the foregoing deposition was taken down, as stated in the caption, and the questions and the answers thereto were reduced to printing under my direction; that the preceding pages represent a true and correct transcript, to the best of my ability, of the evidence given by said witness upon said hearing. And I further certify that I am not of kin or counsel to the parties to the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 12th day of May, 2009.

Teresa Bishop, RPR, RMR
CCR No. B-307
My commission expires 11-21-11.

DISCLOSURE

STATE OF GEORGIA
COUNTY OF DEKALB

Deposition of Jodi Kaufmann

Pursuant to Article 10.B of the Rules and Regulations of the Board of court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as a representative of Shugart & Bishop.

I am not disqualified for a relationship of interest under the provisions of O.C.G.A. 9-11-28.

Shugart & Bishop was contacted by the offices of Weil Gotshal & Manges to provide court reporting services for this deposition.

Shugart & Bishop will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-37 (a) and (b).

Shugart & Bishop has no exclusive contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition.

Shugart & Bishop will charge its usual and customary rates to all parties in the case, and a financial discount will not be given to any party to this litigation.

Teresa Bishop
RPR, RMR, CCR B-307